



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2013-0164; FRL- 9908-89-Region-3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Commonwealth of Virginia; Control of Emissions from Existing Sewage Sludge Incineration Units

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a section 111(d)/129 plan submitted by the Commonwealth of Virginia for sewage sludge incineration (SSI) units. The section 111(d)/129 plan contains a state rule for existing SSI units that was submitted as a result of the March 21, 2011, promulgation of Federal new source performance standards (NSPS) and emission guidelines for SSI units. This action is being taken under sections 111(d) and 129 of the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2013-0164. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection

Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Mike Gordon, (215) 814-2039, or by e-mail at gordon.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 129 of the CAA requires EPA to establish performance standards and emission guidelines for various types of new and existing solid waste incineration units. Section 129(b)(2) requires States to submit to EPA for approval section 111(d)/129 plans that implement and enforce the promulgated emission guidelines. State submittals under CAA sections 111(d) and 129 must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Mmmm, and the requirements of 40 CFR part 60, subpart B and part 62, subpart A.

On December 12, 2012, the Virginia Department of Environmental Quality (VADEQ) submitted to EPA a formal section 111(d)/129 plan for SSI units. The submitted section 111(d)/129 plan was in response to the March 21, 2011 promulgation of Federal NSPS and emission guidelines requirements for SSI units, 40 CFR part 60, subparts LLLL and Mmmm, respectively (76 FR 15372).

On December 3, 2013 (78 FR 72609), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. In the NPR, EPA proposed approval of Virginia's section 111(d)/129 plan for existing SSI units. No comments were received on the proposed approval.

II. Summary of Section 111(d)/129 Plan Submittal

EPA has reviewed the Virginia section 111(d)/129 plan submittal in the context of the requirements of 40 CFR part 60, subparts B and MMMM, and part 62, subpart A. In this action, EPA is finalizing its determination that the submitted section 111(d)/129 plan meets the above-cited requirements. EPA is also revising 40 CFR Part 62, Subpart VV to reflect this approval. A detailed explanation of the rationale behind this action is available in the Technical Support Document (TSD) for this rulemaking as well as the December 3, 2013 proposal.

III. General Information Pertaining to Section 111(d)/129 Plan Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process;

- (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or
- (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any

event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

Other specific requirements of Virginia's section 111(d)/129 plan for existing SSI units and the rationale for EPA's proposed action are explained in the NPR and associated TSD, and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving Virginia's section 111(d)/129 plan for existing sewage sludge incineration units. Therefore, EPA is amending 40 CFR part 62, subpart VV to reflect this final action. This approval is based on the rationale discussed above and in further detail in the TSD associated with this action.

The EPA Administrator continues to retain authority for several tasks, as provided in 40 CFR 60.5050 and in Plan Provisions - section J of the submittal.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions

Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing VADEQ's submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a VADEQ submission for failure to use VCS. It would thus be inconsistent with applicable law

for EPA, when it reviews a VADEQ submission, to use VCS in place of a VADEQ submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule for the approval of VADEQ's section 111(d)/129 plan for SSI units does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Virginia's Section 111(d)/129 plan for existing sewage sludge incineration units may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 62

Environmental protection, Air pollution control, Incorporation by reference, Administrative practice and procedure, Aluminum, Fertilizers, Flouride, Intergovernmental relations, Paper and products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: March 13, 2014.

W. C. Early,
Acting Regional Administrator,
Region III.

40 CFR part 62 is amended as follows:

**PART 62 – APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart VV--Virginia

2. Subpart VV is amended by adding an undesignated center heading after § 62.11642 and by adding §§ 62.11650, 62.11651, and 62.11652 to read as follows:

Emissions From Existing Sewage Sludge Incineration Units - Section 111(d)/129 Plan

§62.11650 Identification of plan.

Section 111(d) /129 plan for existing sewage sludge incineration and the associated Virginia Administrative Code (VAC), specifically Article 55 of 9VAC5 Chapter 40, submitted to EPA on December 12, 2012.

§62.11651 Identification of sources.

The affected facility to which the plan applies is each sewage sludge incineration unit within the Commonwealth of Virginia that commenced construction on or before October 14, 2010.

§62.11652 Effective date.

The effective date of the plan for existing sewage sludge incineration units is [insert date 30 days from date of publication].

[FR Doc. 2014-06963 Filed 03/28/2014 at 8:45 am; Publication Date: 03/31/2014]